

44. J 89/2: M33/4

TO CREATE THE DISTRICT COURT FOR THE NORTHERN MARIANA ISLANDS

HEARING BEFORE THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE NINETY-FIFTH CONGRESS FIRST SESSION

ON
S. 2149
TO CREATE THE DISTRICT COURT FOR THE
NORTHERN MARIANA ISLANDS

Printed for the use of the Committee on the Judiciary



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(II)

CONTENTS

Statements:

Joint statement of C. Brewster Chapman, Jr., Department of the Interior; Herman Marcuse, Department of Justice; and Stafford D. Ritchie II, Administrative Office of the U.S. Courts, presented by C. Brewster Chapman, Jr.-----	Page 4
Stafford D. Ritchie II, Administrative Office of the U.S. Courts-----	6
Edward Pangelinan, Marianas/Washington liaison officer, Office of Transition Studies and Planning Government of the Northern Mariana Islands, accompanied by Paul S. Koffsky, attorney at law, law firm of Wilmer, Cutler, & Pickering-----	12

(III)

TO CREATE THE DISTRICT COURT FOR THE NORTHERN MARIANA ISLANDS

TUESDAY, OCTOBER 4, 1977

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 10:25 a.m., in room 2228, Dirksen Senate Office Building, Senator Dennis DeConcini (acting chairman of the committee) presiding.

Present: Senator DeConcini.

Staff present: William P. Westphal, professional staff member.

Senator DECONCINI (acting chairman). The committee will come to order at this time.

The Committee on the Judiciary today will consider S. 2149, the bill to create a District Court for the Northern Mariana Islands.

This bill, which was introduced by Chairman Eastland at the request of the administration, would implement article IV of the covenant to establish a Commonwealth of the Northern Mariana Islands in political union with the United States, Public Law 94-241.

The President is expected to issue a proclamation early next year announcing the termination of the present territorial agreements and signaling the date upon which the Commonwealth and its new constitution will come into existence.

Under the terms of the Commonwealth covenant, the United States is required to establish a court of record known as the District Court for the Northern Mariana Islands. Because it is extremely desirable to have such a court established at the time the Commonwealth comes into existence, and thereby prevent a disruption in the legal system, it is important that the Congress act on this legislation prior to January of next year.

The court sought to be created by this legislation will have essentially the same jurisdiction as a District Court of the United States, including jurisdiction over matters involving Federal questions and Federal crimes. This district court will also have original and appellate jurisdiction over all civil and criminal cases arising in the Northern Mariana Islands, except as the Commonwealth's constitution and laws shall otherwise provide.

This constitution, which will be implemented upon the commencement of Commonwealth status, requires the legislature of the Northern Marianas to establish a local, Commonwealth court. The Commonwealth court will have original jurisdiction over local civil and criminal matters where the amount in controversy or the fine involved does not exceed \$5,000 or the term of imprisonment is less

than 5 years. Until the legislature establishes the Commonwealth court, the district court will exercise jurisdiction over these matters.

Once the Commonwealth and the constitution come into existence, it will, understandably, take some period of time for the legislature to meet and establish the Commonwealth court. Therefore, absent U.S. congressional action to establish a district court, the government of the Northern Mariana Islands may find itself, for some time, without a judiciary to handle civil and criminal matters. Even after the Commonwealth legislature acts to create a local court, the Commonwealth would be without a court with jurisdiction over Federal matters and with powers of appellate review absent congressional action on this legislation.

The bill before us, S. 2149, provides in subsection (a) for the establishment of the district court and the location at which it will be held. Subsection (b)(1) authorizes the President to appoint, with the advice and consent of the Senate, a judge for the district court and sets the judge's salary. Subsection (b)(2) of the bill authorizes the chief judge of the Ninth Judicial Circuit to assign a judge to the District Court of the Northern Mariana Islands for a period of time should such prove necessary for the court to carry out its functions. It also provides that such an assigned judge may appoint statutory court officers if necessary. Subsection (b)(3) makes provision for Presidential appointment of statutory court officers and subsection (b)(4) establishes the terms of office of such officers and the judge in the case that these persons are also serving in like capacities in another judicial district. Subsection (c) provides that certain rules promulgated by the Supreme Court and certain provisions of law will apply to the district court and to appeal therefrom.

Section 2(a) specifies jurisdiction in all cases arising under the constitution, treaties, and laws of the United States, regardless of the amount in controversy. Subsection (b) specifies that jurisdiction lies in the district court for all other cases not vested by the law or constitution of the Northern Mariana Islands in courts of the Northern Mariana Islands.

Section 3 vests appellate jurisdiction with the district court as the constitution of the Northern Marianas may provide.

Section 4(a) provides for the relationship between the district court and the local courts with respect to appeals, certiorari, removal, habeas corpus, and other proceedings. Subsection (b) specifies the applicability of pertinent administrative provisions of 28 U.S.C. to the district court.

Section 5 relates to the effective date of the legislation.

The legislation before us has been drafted by representatives of this committee with consultation of representatives of the administration and the judicial branch.

We will now receive testimony from C. Brewster Chapman of the Department of Interior; Herman Marcuse of the Department of Justice; Stafford D. Ritchie, II, of the Administrative Office of the U.S. courts; and Edward Pangelinan, attorney at law, and Howard Willins, attorney at law, representatives of the Northern Mariana Islands.

The record will now incorporate a copy of S. 2149.

A BILL To create the District Court for the Northern Mariana Islands, implementing article IV of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America

Whereas section 401 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, approved by section 1 of the joint resolution of March 26, 1976 (Public Law 94-241; 90 Stat. 266), provides that the United States will establish a District Court for the Northern Mariana Islands: Now, therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) there is hereby established for and within the Northern Mariana Islands a court of record to be known as the District Court for the Northern Mariana Islands. The Northern Mariana Islands shall constitute a part of the same judicial circuit of the United States as Guam. Terms of court shall be held on Saipan and at such other places and at such times as the court may designate by rule or order.

(b)(1) The President shall, by and with the advice and consent of the Senate, appoint a judge for the District Court for the Northern Mariana Islands who shall hold office for the term of eight years and until his successor is chosen and qualified, unless sooner removed by the President for cause. The judge shall receive a salary payable by the United States which shall be at the rate prescribed for judges of the United States district courts.

(2) The Chief Judge of the Ninth Judicial Circuit of the United States may assign justices of the High Court of the Trust Territory of the Pacific Islands or judges of courts of record of the Northern Mariana Islands who are licensed attorneys in good standing or a circuit or district judge of the ninth circuit, or the Chief Justice of the United States may assign any other United States circuit or district judge with the consent of the judge so assigned and of the chief judge of his circuit to serve temporarily as a judge in the District Court for the Northern Mariana Islands whenever such an assignment is necessary for the proper dispatch of the business of the court. Such judges shall have all the powers of a judge of the District Court for the Northern Mariana Islands, including the power to appoint any person to a statutory position, or to designate a depository of funds or a newspaper for publication of legal notices.

(3) The President shall appoint, by and with the advice and consent of the Senate, a United States attorney and United States marshal for the Northern Mariana Islands to whose offices the provisions of chapters 35 and 37 of title 28, respectively, United States Code, shall apply.

(4) If the President appoints a judge for the District Court for the Northern Mariana Islands or a United States attorney or a United States marshal for the Northern Mariana Islands who at that time is serving in the same capacity in another district, the appointment shall, without prejudice to a subsequent appointment, be for the unexpired term of such judge or officer.

(c) The provisions of chapters 43 and 49 of title 28, United States Code, and the rules heretofore or hereafter promulgated and made effective by the Congress or the Supreme Court of the United States pursuant to titles 11, 18, 28, United States Code, shall apply to the District Court for the Northern Mariana Islands and appeals therefrom where appropriate, except as otherwise provided in articles IV and V. The terms "attorney for the government" and "United States attorney" as used in the Federal Rules of Criminal Procedure (rule 54(c)) shall, when applicable to cases arising under the laws of the Northern Mariana Islands, include the attorney general of the Northern Mariana Islands or any other person or persons as may be authorized by the laws of the Northern Marianas to act therein.

SEC. 2. (a) The District Court for the Northern Mariana Islands shall have the jurisdiction of a district court of the United States, except that in all causes arising under the Constitution, treaties, or laws of the United States, it shall have jurisdiction regardless of the sum or value of the matter in controversy.

(b) The district court shall have original jurisdiction in all causes in the Northern Mariana Islands not described in subsection (a) jurisdiction over which is not vested by the Constitution or laws of the Northern Mariana Islands in a court or courts of the Northern Mariana Islands. In causes brought in the district

court solely on the basis of this subsection, the district court shall be considered a court of the Northern Mariana Islands for the purposes of determining the requirements of indictment by grand jury or trial by jury.

SEC. 3. The district court shall have such appellate jurisdiction as the Constitution and laws of the Northern Mariana Islands provide. Appeals to the district court shall be heard and determined by an appellate division of the court consisting of three judges, of whom two shall constitute a quorum. The judge appointed for the court by the President shall be the presiding judge of the appellate division and shall preside therein unless disqualified or otherwise unable to act. The other judges who are to sit in the appellate division at any session shall be designated by the presiding judge from among the judges assigned to the court from time to time pursuant to subsection 1(b)(2): *Provided, however*, That only one of them shall be a judge of a court of record of the Northern Mariana Islands. The concurrence of two judges shall be necessary to any decision by the district court on the merits of an appeal but the presiding judge alone may make any appropriate orders with respect to an appeal prior to the hearing and determination thereof on the merits and may dismiss an appeal for want of jurisdiction or failure to take or prosecute it in accordance with the applicable law or rules of procedure.

SEC. 4. (a) The relations between the courts established by the Constitution or laws of the United States and the courts of the Northern Mariana Islands with respect to appeals, certiorari, removal of causes, the issuance of writs of habeas corpus, and other matters or proceedings shall be governed by the laws of the United States pertaining to the relations between the courts of the United States and the courts of the several States in such matters and proceedings, except as otherwise provided in article IV of the covenant: *Provided*, That for the first fifteen years following the establishment of an appellate court of the Northern Mariana Islands the United States court of appeals for the judicial circuit which includes the Northern Mariana Islands shall have jurisdiction of appeals from all final decisions of the highest court of the Northern Mariana Islands from which a decision could be had in all cases involving the Constitution, treaties, or laws of the United States, or any authority exercised thereunder, unless those cases are reviewable in the District Court for the Northern Mariana Islands pursuant to section 3 of this Act.

(b) Those portions of title 28 of the United States Code which apply to Guam or the District Court of Guam shall be applicable to the Northern Mariana Islands or the District Court for the Northern Mariana Islands, respectively, except as otherwise provided in article IV of the covenant.

SEC. 5. This Act shall come into force upon its approval or at the time proclaimed by the President for the Constitution of the Northern Mariana Islands to become effective, whichever is the later date.

At this time we welcome you here. Please proceed.
Please identify yourselves for the record.

JOINT STATEMENT OF C. BREWSTER CHAPMAN, JR., DEPARTMENT OF THE INTERIOR; HERMAN MARCUSE, DEPARTMENT OF JUSTICE; AND STAFFORD D. RITCHIE, II, ADMINISTRATIVE OFFICE OF THE U.S. COURTS; PRESENTED BY C. BREWSTER CHAPMAN, JR.

Mr. CHAPMAN. I am C. Brewster Chapman, Jr., Assistant Solicitor for Territories, Department of the Interior. On my left is Mr. Herman Marcuse from the Department of Justice. On my right is Mr. Stafford D. Ritchie, II, Assistant General Counsel, Administrative Office of the U.S. Courts and also representing the Committee on Pacific Territories, Judicial Conference of the United States.

With the Chair's permission, I would like to read my statement.
Senator DECONCINI. Please proceed.

Mr. CHAPMAN. Mr. Chairman, we are pleased to appear here today to testify in support of S. 2149, a bill to create the District Court for the Northern Mariana Islands.

This bill is necessitated by the fact that article IV of the covenant to establish a Commonwealth of the Northern Mariana Islands in political union with the United States of America, House Joint Resolution 549, Public Law 94-241, 90 Stat. 266, provides that, "The United States will establish for and within the Northern Mariana Islands a court of record to be known as the 'District Court for the Northern Mariana Islands'."

In accordance with the provisions of article IV, this district court will have the jurisdiction of a district court of the United States except that in all causes arising under the constitution, treaties, or laws of the United States it shall have jurisdiction regardless of the amount in controversy. In addition, it will have original jurisdiction in all causes in the Northern Mariana Islands, jurisdiction over which is not vested by the constitution or laws of the Northern Mariana Islands in a court or courts of the Northern Mariana Islands. Finally, the district court will have such appellate jurisdiction as the constitution or laws of the Northern Mariana Islands may provide.

The covenant represents the culmination of over 20 years of efforts by the people of the Northern Mariana Islands to achieve official recognition and acceptance of their repeatedly expressed desires to become a part of the United States. It is the product of careful and serious negotiations between the people of the Northern Mariana Islands and the United States. It has been approved by the Congress and the President of the United States. It is now the law of the land, and its provisions are mutually binding on the parties.

In accordance with article II of the covenant, the people of the Northern Mariana Islands have framed and approved a constitution for the Northern Mariana Islands and have submitted it to the U.S. Government for approval. In accordance with the provisions of article II of the covenant, the constitution will be deemed to have been approved on October 22, 1977, unless earlier approved or disapproved. Thus the constitution could become effective as early as January 9, 1978, in accordance with article X of the covenant.

Article IV of this constitution provides for the establishment of the judicial branch of the local government. It calls for the creation by the legislature of a Commonwealth trial court with original jurisdiction over, among others, civil actions where the amount in controversy is \$5,000 or less and criminal actions where the fine is \$5,000 or less or the imprisonment is for no more than 5 years. It also permits the establishment of an appeals court after the constitution has been in effect for 5 years. In the event no district court for the Northern Mariana Islands is available under article IV of the covenant, the legislature is authorized to expand the civil and criminal jurisdiction of the Commonwealth trial court and establish an appeals court without reference to the 5-year waiting period.

The legislature of the Northern Mariana Islands will have no authority to act until the constitution of the Northern Mariana Islands has become effective. After the constitution becomes effective, it will take the legislature an undetermined amount of time to create the court authorized by article IV of the constitution and to establish it as a functioning branch of the local government. Transitional provisions of the constitution will enable the current, local courts to hear and determine cases that will be within the limited jurisdiction of the

Commonwealth trial court. However, unless the district court for the Northern Mariana Islands is established by S. 2149 in this session of Congress, there will be no court in the Northern Mariana Islands to hear serious criminal and important civil cases, arising under local law. Moreover, there would be no court to hear causes involving Federal questions or Federal crimes, and there would be no appellate tribunal.

The urgent need for enactment of S. 2149 in this session of the Congress is readily apparent. If action on the bill is deferred until the next session of the Congress, there could be an unacceptable void in the judicial functions of the new government for the Northern Mariana Islands.

The language of S. 2149 follows closely the corresponding provisions of the Organic Act of Guam, 48 U.S.C. 1424 and 1424(b), and article IV of the covenant which was approved by the Congress a year and a half ago.

In closing we would like to thank the committee for its prompt action on this matter, and especially the members of the committee's staff for their outstanding cooperation and assistance in expediting the presentation of S. 2149 both in the Senate and before this committee.

Thank you.

Senator DeCONCINI. Thank you.

Who else would like to testify at this time?

Mr. RITCHIE. Mr. Chairman, if I may, I have a supplemental statement which I would like to make.

Senator DeCONCINI. All right. Please proceed, Mr. Ritchie.

STATEMENT OF STAFFORD D. RITCHIE II, ASSISTANT GENERAL COUNSEL, ADMINISTRATIVE OFFICE OF THE U.S. COURTS

Mr. RITCHIE. Mr. Chairman and members of the committee, I am Stafford D. Ritchie II, Assistant General Counsel, Administrative Office of the U.S. Courts.

Thank you for the opportunity to appear here today to express the views of the Administrative Office of the U.S. Courts and the Committee on Pacific Territories of the Judicial Conference of the United States. I appear on behalf of the Honorable Richard H. Chambers, U.S. circuit judge for the ninth judicial circuit and chairman of the Committee on Pacific Territories.

On behalf of the Administrative Office and the Pacific Territories Committee, I have joined the Departments of Interior and Justice in the joint statement already presented to your committee. We recognize the urgency of this legislation, and appreciate your current efforts to insure enactment of S. 2149 before adjournment.

On September 16, 1977, the Judicial Conference of the United States acted upon the recommendations presented to it by the Committee on Pacific Territories on the subject of the judicial establishment to be created in the Northern Mariana Islands. The Conference approved all recommendations made by the committee.

That S. 2149 satisfies all but one of these recommendations is not coincidence. We have worked closely with the Departments of Interior and Justice, and the proposed legislation submitted by the Department of Interior incorporates our recommendations, except for the recom-

mendation that appeals to the U.S. Court of Appeals for the Ninth Circuit from the appellate division should be by writ of certiorari.

Section 3 of S. 2149 establishes the procedural framework to guide the operation of the appellate division of the District Court for the Northern Mariana Islands. The framework is analogous to that provided for the District Court of Guam. In conjunction with section 1(b)(2), section 3 limits participation on the appellate division to one judge of a court of record of the Northern Mariana Islands, who is a licensed attorney in good standing. We believe the procedural framework and the representational limitation will insure that the appellate division will be a competent and impartial appellate tribunal for appeals from the local Commonwealth trial court, and also will have the appearance of impartiality.

Having insured these attributes of the appellate division, the committee recommended, and the Judicial Conference adopted the recommendation, that appeals to the U.S. Court of Appeals for the Ninth Circuit should be by writ of certiorari.

The Commonwealth trial court will be a court of limited original jurisdiction. The court will have jurisdiction over actions involving land in the Northern Mariana Islands and other civil actions except those in which the value of the matter in controversy exceeds \$5,000. The court also will have original jurisdiction over criminal actions except those in which the defendant, if convicted, may be fined an amount that exceeds \$5,000 or may be imprisoned for a term that exceeds 5 years. Assuming the establishment of the District Court for the Northern Mariana Islands, the Commonwealth trial court may be invested with additional criminal and civil jurisdiction only after the Constitution has been in effect for 5 years.

Those litigants whose cases fall within the limited original jurisdiction of the Commonwealth trial court will be provided one appeal as of right to the appellate division of the District Court for the Northern Mariana Islands. We believe that review by writ of certiorari is necessary to truncate appeals, in the discretion of the court of appeals, in cases not involving substantial questions or sums of money, and in cases where the cost of the appeal to the parties would be disproportionately large in relation to the matter in controversy. In this context, the logistics of the appellate process are important.

In Guam, for example, the time and expense of perfecting an appeal to the U.S. Court of Appeals for the Ninth Circuit at San Francisco can be large. A litigant who prevails in both the Commonwealth trial court and the appellate division of the district court may have no more than a pyrrhic victory if he is required by a litigious losing opponent to make his case again in San Francisco.

Because of the apprehension of the Departments of Interior and Justice that such an appellate procedure should have the express or tacit approval of the people of the Northern Mariana Islands, the proposal submitted by Interior and S. 2149 continue to provide for appeal as of right to the U.S. Court of Appeals for the Ninth Circuit from decisions of the appellate division. We continue to believe that review by writ of certiorari to the appellate division would be in accordance with sound principles of judicial administration, and that this procedure could be accommodated in S. 2149 without substantial change. However, should your committee determine to postpone

consideration of this issue to a later date, we will not object to this course of action. Our primary concern, of course, is to assure the presence of a functioning judiciary in the Northern Mariana Islands without interruption.

We also would like to take this opportunity to clarify several other issues in respect of the provisions of S. 2149.

Section 1(b)(2) authorizes the Chief Judge of the Ninth Judicial Circuit of the United States to assign "justices of the High Court of the Trust Territory of the Pacific Islands or judges of courts of record of the Northern Mariana Islands who are licensed attorneys in good standing or a circuit or district judge of the Ninth Circuit" to serve temporarily as a judge in the District Court for the Northern Mariana Islands. Since judges so assigned are authorized to sit on the appellate division, we feel that a proper qualification is licensure as an attorney.

As a technical matter, however, the bylaws of some State bars may require an attorney to resign his bar membership upon assuming a judicial office. While the language of section 1(b)(2) could be construed to proscribe assignment of a judge in such a situation to the District Court for the Northern Mariana Islands, that construction is not intended. Rather, if the judge were a licensed attorney in good standing at the time of appointment to the judicial office and if he resigned his bar membership exclusively as a consequence of appointment to judicial office, he will be qualified for assignment to the District Court for the Northern Mariana Islands.

Section 1(b)(2) further authorizes the assignment of a district judge of the ninth circuit to serve temporarily on the District Court for the Northern Mariana Islands. In the context of this bill, the phrase "district judge" is not constrained by the definitions found in title 28, United States Code, and specifically by the definition of judge found in section 451 of that title. The phrase "district judge of the ninth circuit" is intended to comprehend any judge for the District Court of Guam who is appointed by the President. To make this point clear, we are offering an amendment for your committee's consideration which defines the term "district judge of the ninth circuit" for purposes of this bill.

Mr. WESTPHAL. Excuse me. The proposed amendment that you have had typed up and handed to the committee would make this definition of the district judge of the ninth circuit one which would include the judge of the District Court of Guam. You suggest that that be added as separate section to S. 2149.

Could we not accomplish the same purpose by inserting on page 2 of the bill, line 19, section 1(b)(2), where the subsection gives to the chief judge of the ninth circuit authority to assign to the court of the Northern Mariana Islands a circuit or district judge of the ninth circuit—at that point could we not add the phrase "including the judge of the District Court of Guam"?

Mr. RITCHIE. Yes, sir. I believe either approach would satisfy our problem in this respect.

Mr. WESTPHAL. Thank you. Please continue.

Mr. RITCHIE. Finally, we recently have confronted the question of the applicability of the Criminal Justice Act of 1964, as amended, to the District Court for the Northern Mariana Islands. The Criminal Justice Act applies to Guam.

Accordingly, we conclude that the Criminal Justice Act will be applicable to the District Court for the Northern Mariana Islands by virtue of the operation of section 502(a)(2) of the covenant to establish a Commonwealth of the Northern Mariana Islands in political union with the United States of America, as approved by House Joint Resolution 549, Public Law No. 94-241, 90 Stat. 263, March 24, 1976.

The Criminal Justice Act, therefore, will provide for the furnishing of representation for any person financially unable to obtain adequate representation in the classes of cases, primarily criminal, covered by the act. Representation will be provided regardless of whether the district court is exercising Federal jurisdiction or local jurisdiction, or is sitting as the appellate division in review of criminal prosecutions in the Commonwealth trial court.

For purposes of clarity and compilation of all provisions concerning the judicial establishment of S. 2149, your committee may wish to make express the applicability of the Criminal Justice Act of 1964, as amended, by inclusion of an appropriate provision in S. 2149. Accordingly, we are offering an amendment for your committee's consideration which defines the term "district court" as used in the Criminal Justice Act to include the District Court for the Northern Mariana Islands.

Thank you for the opportunity to appear today. I stand ready to answer any questions you may have.

Senator DECONCINI. Mr. Westphal has some questions.

Mr. WESTPHAL. Mr. Ritchie, your last suggestion with reference to clarifying any possible ambiguity about the application of the Criminal Justice Act in the Commonwealth of the Northern Marianas; rather than add that as a separate section to S. 2149, I am wondering if we could accomplish the same thing by adding a provision at the end of section 1(a). On the bill that would appear at the end of line 5 on page 2.

At that point we could add language such as the following: "The district court established by this act is declared to be a 'district court' as that term is used in 18 U.S.C. 3006(a)."

Do you think that that language would accomplish the same thing as suggested by your amendment which would have it as an entirely separate section?

Mr. RITCHIE. Yes; I believe it would.

Mr. WESTPHAL. I have one other point.

I do not recall that your prepared statement mentions this but you have suggested to the committee that the act contain a section defining the term "covenant" as used in this act.

In view of the whereas clause contained in this bill which precedes the enactment clause on page 1 of the bill, where specific reference is made to the covenant and reference to the public law, the date of approval, and the U.S. Stat. citation, is it necessary to otherwise define the term "covenant" as used in this bill? What is your observation about that?

Mr. RITCHIE. I had not seen the whereas clause which does make express reference to the covenant by its full name. Other than that whereas clause, the covenant is not referred to with the proper citation within the body of the bill which will become a public law. Our only

desire was to insure that there could be no doubt as to the reference to covenant. As long as that goal is accomplished, we would be satisfied.

Mr. WESTPHAL. If the committee agrees that there is some uncertainty about what the term "covenant" means or the references to various articles of the covenant as they are used in the bill, could we clear up that ambiguity by inserting on page 3 of line 24 of the bill, after the reference to articles IV and V, the phrase "of the covenant approved by the act of March 24, 1976, 90 Stat. 263"? Would that clear up the ambiguity?

Mr. RITCHIE. Yes, sir, I suppose it would.

Mr. WESTPHAL. As reference is made later on in the bill to articles of the covenant—for example, on page 6, line 17, there is a reference to article IV of the covenant—I think it would then be clear that reference is to the covenant approved by the act of March 24, 1976, 90 Stat. 263.

Do you agree with that?

Mr. RITCHIE; Yes, I would agree with you.

Mr. WESTPHAL. Mr. Chapman and Mr. Marcuse, do you agree with that?

Mr. CHAPMAN. Yes.

Mr. MARCUSE. Yes.

Mr. WESTPHAL. I make these suggestions simply because if amendments are necessary it is desirable to make them as simple as possible without altering the basic structure of a particular bill.

Mr. CHAPMAN. I quite agree with that.

Mr. MARCUSE. With respect to the suggestion of the Administrative Office of the United States Courts to have a certiorari provision, I wonder whether that really is necessary.

The first circuit had a similar problem with respect to appeals from Puerto Rico. They took care of it by a rule which provided for the dismissals of appeals based solely on local law unless the decision below was patently erroneous.

I think a rule such as that for the ninth circuit would take care of the suggestion to set up a specific statutory certiorari procedure.

Mr. WESTPHAL. Mr. Marcuse, in that connection it is my understanding that appeals from the District Court of Guam go to the ninth circuit as of right and not by certiorari. Is that true?

Mr. MARCUSE. That is my understanding.

Mr. WESTPHAL. Isn't it desirable that the procedure in the court of the Northern Mariana Islands be the same as it is in Guam and, if a change is going to be made as to a certiorari-type of review rather than an appeal of right, it be made for both of those courts at the same time?

Mr. MARCUSE. That would be correct. That was one of the reasons why we were reluctant to accept the certiorari suggestion. We felt the law should be the same for Guam and the Northern Mariana Islands.

Mr. WESTPHAL. Also in that connection, it would seem to me that when we are in the situation that we are in at the present time—that is, we will soon be starting out with a new government under a new constitution with no semblance of trusteeship as has existed for many years and we are going to have a new local court system with appellate review in the district court as created by this act—then it is important at an early stage of a new system such as that, that litigants who feel that they have been wronged by the decision of a court have an appeal

as a right rather than one in the discretion of the court to which the petition of certiorari is addressed. That would seem to be a better way of getting the judicial system started in a new government.

Mr. MARCUSE. I think that is perfectly correct for the formative stages. Later on it may be changed depending on what conditions develop.

Mr. WESTPHAL. After the residents of the Northern Marianas and everybody else have more experience under this system, it might be that the consensus would be to effect a change. However, at this time it should be kept the same as the procedure in Guam. Do you agree with that?

Mr. MARCUSE. Yes.

Mr. CHAPMAN. I might add that we are not opposed to a certiorari approach to appeals in the ninth circuit. However, we do not think it is appropriate at this time, partly because the people themselves have not been talked to about it and partly because the covenant was negotiated over a number of years with the people of the Northern Mariana Islands with the expectation they would have the same system that they have had in Guam. Also, the situation on Guam is not altogether clear. There is a move to have a Supreme Court on Guam with direct access to the Supreme Court by writ of certiorari, which would cut down significantly on the flow of cases from the district court to the ninth circuit.

Senator DeCONCINI. How many cases does the District of Guam have to the ninth circuit on an annual basis? Do you know that?

Mr. CHAPMAN. I do not know, sir.

Mr. WESTPHAL. Mr. Ritchie, do you know?

Mr. RITCHIE. I do not have the figure.

Mr. WESTPHAL. It would be under 20, wouldn't it?

Mr. RITCHIE. It would be in that neighborhood.

Mr. Chairman, as a point of clarification, I would like to point out that we did not propose that the review of all decisions from the district court would be by writ of certiorari. We proposed merely that the decisions of the appellate division of the district court would be by writ of certiorari. Appeals from the decisions of the district court itself, whether it be exercising its Federal jurisdiction or its original local jurisdiction, would still be a matter of right.

Mr. WESTPHAL. I understand that. However, the fact of the matter is that to the extent that the District Court of Guam has appellate jurisdiction over the decisions of the local courts, a further review of those decisions of the District Court of Guam exercising its appellate jurisdiction now goes by right to the ninth circuit.

Mr. RITCHIE. That is correct.

Mr. WESTPHAL. This bill, S. 2149, would provide an identical procedure with respect to the Northern Mariana Islands.

Mr. RITCHIE. That is correct.

Mr. WESTPHAL. Again, when I commented that it seemed to me that the procedure in Guam and the Northern Mariana Islands should be the same and if any changes are to be made there should be changes in both courts at the same time, I believe you agreed.

Mr. RITCHIE. I would like to point out that there is one difference between the appellate division in Guam and the appellate division to be formed in the Northern Mariana Islands. That arises as a consequence of the fact that the local courts in Guam, whose decisions are

reviewed by the appellate division, have plenary original jurisdiction whereas the local courts in the Northern Mariana Islands, whose decisions will be reviewed by the appellate division, will have, at least for the first 5 years, a very circumscribed original local jurisdiction.

Senator DeCONCINI. Mr. Pangelinan, you may proceed.

STATEMENT OF EDWARD PANGELINAN, MARIANAS/WASHINGTON LIAISON OFFICER, OFFICE OF TRANSITION STUDIES AND PLANNING, GOVERNMENT OF THE NORTHERN MARIANA ISLANDS, ACCOMPANIED BY PAUL S. KOFFSKY, ATTORNEY AT LAW, WILMER, CUTLER & PICKERING

Mr. PANGELINAN. Thank you, Mr. Chairman.

My name is Edward Pangelinan. I am the Marianas/Washington liaison officer. With me is Mr. Paul S. Koffsky, counsel for the Marianas Constitutional Convention, of the law firm of Wilmer, Cutler & Pickering. We are appearing today, Mr. Chairman, on behalf of the people of the Northern Marianas.

If I may, I would like to present my testimony.

Senator DeCONCINI. Please proceed.

Mr. PANGELINAN. Mr. Chairman and members of the committee, I am honored to appear before you today in support of S. 2149, a bill to create the District Court for the Northern Mariana Islands. On behalf of the Northern Marianas people, I wish to thank the chairman, the committee, and its staff for their prompt action in drafting this legislation and in conducting these hearings. We urgently request your assistance in securing approval of this legislation before the end of this session of Congress.

As you know, S. 2149 implements article IV of the covenant establishing the Commonwealth of the Northern Mariana Islands approved by Congress and enacted into law in 1976. In reliance on the covenant, the constitution of the Northern Mariana Islands assigns important responsibilities to the Federal court to be established by S. 2149. The constitution was approved by the Northern Marianas people on March 6, 1977, and was transmitted to the President for approval by the United States on April 23, 1977. It is our understanding that the constitution will be approved by the United States sometime after October 22, 1977, and that constitutional government under the new constitution will begin on January 9, 1978. It is extremely important that a Federal district court be established and, hopefully, ready to function by that date—only 3 months from now. In considering this legislation, I ask the committee to consider the following points:

First, the district court will have all the customary responsibilities of a Federal district court. Under the provisions of the covenant, numerous U.S. laws become applicable in the Northern Marianas on the anticipated effective date of constitutional government, or January 9, 1978. If the district court is not established promptly, there will be no Federal forum to consider the wide range of civil and criminal matters that arise under these laws after that date.

Second, the district court will have other substantial duties. To permit the ordered growth of an indigenous court system, our Con-

stitutional Convention committed important responsibilities for local matters to the district court. For at least the first 5 years of Commonwealth government, the district court will exercise jurisdiction over most civil cases in which more than \$5,000 is at issue and all criminal cases in which the defendant, if convicted, is liable to a prison term of more than 5 years or a fine greater than \$5,000. In addition, the district court will serve as the Commonwealth's appellate tribunal, hearing appeals from matters decided in the Commonwealth trial courts. One significant responsibility will be the interpretation of the covenant and the Commonwealth constitution.

Third, the Northern Marianas people believe that a judicial system must not only function efficiently but also command the respect of those it serves. The Federal District Court for the Northern Marianas, if promptly established, will substantially promote the achievement of both of these objectives. As a symbol of objective and learned justice, the district court would stand as an example to our local bench and bar, and as a reassurance to our people. As the Constitutional Convention committee charged with recommending the structure of the judicial branch reported to the Convention:

The committee believes that the citizens of the Commonwealth place a high value on judicial competence and experience, and that it is particularly important that the first years of experience with a Commonwealth court system encourage the people to place their confidence in the new judicial system.

Lastly, prompt enactment of S. 2149 has an important symbolic significance. This legislation is noncontroversial and is designed only to meet the obligations undertaken by the United States when it approved the covenant. The Northern Marianas people displayed their affection and confidence in the United States when they overwhelmingly exercised their right of self-determination to become part of the United States as a Commonwealth. It is obviously important to both the United States and the Northern Marianas people that this new relationship get off to the best possible start.

Mr. Chairman, the need for action is great. I urge the committee to move expeditiously to assure that the people of the Commonwealth of the Northern Mariana Islands will not be deprived of a Federal district court. Thank you.

Senator DECONCINI. Thank you.

How many people live in the Northern Marianas?

Mr. PANGELINAN. The total population of the Northern Marianas is a little less than 15,000 people.

Senator DECONCINI. How many islands are there?

Mr. PANGELINAN. Altogether we have 14 islands. Four are inhabited and the rest are not inhabited.

Senator DECONCINI. What is the major industry there?

Mr. PANGELINAN. The major industry, Mr. Chairman, is now tourism. There is agriculture, a little fishing, and of course government.

Senator DECONCINI. What are the other languages other than English that are spoken there?

Mr. PANGELINAN. We have two indigenous languages. One is Chamorro, which is also spoken in Guam; and the other is Carolinian, which is spoken by about 3,000 of our residents.

Senator DECONCINI. Do you think there would be need for bilingual courts?

Mr. PANGELINAN. I believe not, Mr. Chairman. The English language is the national language in the islands. It is now the official language. We do maintain our local culture and tradition by speaking our local language.

Senator DECONCINI. Are there some citizens, senior citizens or others, who do not speak English?

Mr. PANGELINAN. The older citizens, those over 50 years of age, do have some little comprehension of the language. The majority of the people do speak the language. They read and write it.

Senator DECONCINI. There would be no great problem in finding a local interpreter if necessary, would there?

Mr. PANGELINAN. I believe not, Mr. Chairman. In the past we have been successful in carrying out the function of the judiciary. We do not anticipate any problem in the future.

Senator DECONCINI. What court system do you have now?

Mr. PANGELINAN. At the present time we utilize the High Court of the Trust Territory, which is by law the court system in the Northern Marianas. There is a lower level court for the Northern Marianas. On January 9 that court system will no longer be functioning in the Northern Marianas because of the status of the Commonwealth as well as the laws that cut off the function of the high court. It is for that reason, Mr. Chairman, that the district court is most important. We urge the early enactment of this legislation.

We do have provision in the constitution of the Northern Marianas for local district courts, but there is a time element involved here. The constitutional government is now scheduled to be in place by January 9. It would take some weeks, or even months, before the local district court system could be organized and begin to function.

We are concerned that when January 9 arrives there will be no forum to handle any kind of legal matters because the Federal district court will not be functioning at that point unless this bill is enacted promptly.

Senator DECONCINI. If this bill were not enacted, the existing courts would go out of existence?

Mr. PANGELINAN. They would not be in existence.

Senator DECONCINI. I have no further questions.

Mr. Westphal, do you have any questions?

Mr. WESTPHAL. Yes. I have several.

When the President proclaims the dates as he is required to do under the covenant, there are two things he proclaims. One is the date when the current trusteeship arrangement ceases. The other is the date on which the government as organized under the constitution comes into being as a de facto government. Is that true?

Mr. PANGELINAN. We have two proclamations which are required by the President. The first is the proclamation of the effective date of the constitution, which is now scheduled for January 9 of 1977. The all-important date is the termination of the trusteeship, in which the President will proclaim the end of the trusteeship agreement. That will bring the Northern Marianas under the sovereignty of the United States and will open the establishment of the Commonwealth government. As I understand it, that is now scheduled for some time in 1981.

Mr. WESTPHAL. When the trusteeship arrangement is terminated, then the High Court of the Mariana Islands, which is your present



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court, would not have any jurisdiction at all. That is the point you make. Is that right?

Mr. PANGELINAN. I would like to make a clarification.

The High Court will no longer be in existence on January 9 of next year.

Mr. WESTPHAL. Does either the covenant or the constitution of the Northern Mariana Islands specifically provide that English is the official language of the Northern Mariana Islands?

Mr. PANGELINAN. The covenant does not address itself to that issue directly, although it does provide that the people of the Northern Marianas become U.S. citizens.

The constitution does not provide for English as the national language either, but it is the official language now.

Mr. WESTPHAL. You say it is the official language. My question was this. Is that stated either in the covenant or in the constitution that English is the official language?

Mr. PANGELINAN. It is stated in neither.

Mr. WESTPHAL. Do you think it is of any value to specify in this act that English is the official language of this district court that this act is creating? Or do you think that would be surplus in the act?

Mr. PANGELINAN. I think it would be because now it is recognized that it is our language. It is the official language of the government. As people who are to become U.S. citizens, we are striving to have the benefits of citizenship and we believe that language is part of it.

Mr. WESTPHAL. In other words, as I understand it, it was just assumed by everybody during the negotiations which led to agreement on the covenant that English was the official language in the Northern Marianas. Is that right?

Mr. PANGELINAN. Yes.

Mr. WESTPHAL. You were one of the negotiators. I assume everybody felt that it was not necessary to specify what language was the official language.

Mr. PANGELINAN. At the present time and during the time we were negotiating, by official sanction of some sort English is the language. We hope that that will continue to be the language.

Senator DeCONCINI. Any problems could easily be taken care of by interpreters as you have in the past?

Mr. PANGELINAN. I believe so. The court has always functioned with the English language. When an indigenous resident does not understand the language, we do provide for interpreters for those individuals.

Mr. WESTPHAL. I have one further question, Mr. Chairman.

Mr. PANGELINAN. It is my understanding that at the present time there is no governmental building on Saipan in which you could have permanent facilities for this district court and some permanent facilities would have to be constructed eventually.

Can you tell us what facilities there are which could be used temporarily by the district court? Are there any such facilities in the civic center?

Mr. PANGELINAN. I believe we do have facilities. We are now discussing matters of facility with the High Commission of the Trust Territory. Our resident Commissioner, who is the Chief Executive of the Northern Marianas, has been in touch with the High Commission for use of certain facilities.

For example, at the present time the facilities that were used by the Congress of Micronesia are being utilized by the trustee territory government at the present time. If the High Court moves out from its jurisdiction in the Northern Marianas, they would have facilities perhaps on Capitol Hill. The current facility used by the High Court could be assigned to the district court.

Mr. WESTPHAL. Mr. Chapman, can you add anything to that?

Mr. CHAPMAN. We are in the process of negotiating with the other six administrative districts of Micronesia for future political status. The movement of the government from Saipan is projected for the future, at which the High Court will remove itself from its offices, which would be thoroughly adequate for the district court.

Mr. WESTPHAL. Thank you. I have no further questions.

Senator DeCONCINI. I want to thank the witnesses very much for their attention. I also want to concur with each of their observations about the tremendous effort that the Judiciary Committee staff has put forward in expediting this matter. It has posed some burden but they have risen to the necessity of getting this out.

Does anyone else care to testify?

[No response.]

If not, the hearings will be closed.

Thank you.

[Whereupon, at 11:12 a.m., the hearing adjourned.]



